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Final Regulation Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) citation	8 VAC20-40-10 through 8VAC20-40-10-70
Regulation title	Regulations Governing Educational Services for Gifted Students
Action title	Revision of regulations school divisions must meet in their gifted education programs, K - 12
Date this document prepared	February 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The *Regulations Governing Educational Services for Gifted Students* provide definitions; criteria for screening, referral, and identification of gifted students; delivery of services parameters; and elements of appropriately differentiated curriculum and instruction necessary to meet the learning needs of these students. The regulations also provide requirements for professional development of instructional personnel, the school division's local plan for the education of the gifted, the annual report, and the local advisory committee for the education of the gifted. Additional information is provided about the Department of Education's technical review of local plans for gifted programs and the funding of gifted programs to school divisions through the Appropriation Act.

The existing regulations were approved by the Virginia Board of Education in 1993. The purpose of these proposed revisions is to integrate findings from relevant research regarding identification, curriculum and instruction, delivery of services, and professional preparation into the standards Virginia public schools use to establish and operate programs for which the General Assembly has allocated funds through the *Standards of Quality*.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Board of Education adopted the proposed revisions to the *Regulations Governing Educational Services for Gifted Students* on March 26, 2009.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 22.1-16 of the *Code of Virginia* vests the Board of Education with the authority to adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This action is essential to ensure that gifted students in the Commonwealth are provided with an education that is commensurate with their abilities. The state definitions and provisions found in the *Regulations Governing Educational Services for Gifted Students* establish the basic expectation for school divisions' services for gifted students. These regulations ensure that school divisions' programs respond appropriately to the learning needs of gifted students, especially those students with economically disadvantaged backgrounds, those with limited English language proficiency, or those with disabilities. The proposed regulations provide clarification to the definitions and to the program operations in order to assist school divisions in providing educational services to gifted students.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The following changes are proposed to the *Regulations Governing Educational Services for Gifted Students*:

1. Additions to and revisions of critical terms;
2. Clarification of the screening, referral, identification, and placement components;
3. Revision of components of the local plan for the education of the gifted;

4. Revisions of the role of local school boards in approval of the local plan for the education of the gifted and the role of the Department of Education in providing technical assistance; and
5. Restatement of language addressing the funding of gifted programs through the Appropriation Act.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

The primary advantages of the proposed regulations for the public or the Commonwealth:

1. The proposed regulations require alignment of services for gifted students with current standards and practices;
2. The proposed regulations establish the role and function of the local advisory committee for the education of the gifted to comply with Section 22.1-18.1 of the *Code of Virginia*;
3. The proposed regulations establish ample time for school divisions to gather data for identification of students;
4. The proposed regulations establish ample time for parents or legal guardians to appeal an identification or placement decision;
5. The proposed regulations reduce the number of instruments used to identify gifted students from four to three;
6. The proposed regulations establish basic expectations that programs for the gifted include monitoring and assessment;
7. The proposed regulations establish expectations that programs for the gifted will be provided within the school day and week to ensure these students have time to study with their age-level peers, their intellectual peers, and time to study independently;
8. The proposed regulations establish expectations that school boards, and not the Department of Education, will approve local plans that are in compliance with the regulations;
9. The proposed regulations establish expectations that school boards will submit a local plan to the Department of Education on a schedule to be determined by the Department; and
10. The proposed regulations provide a statement to reflect that current funding for the education of gifted students is governed by the Appropriation Act.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

The substantive changes are as follows:

Section number	What has changed	Rationale for change
8VAC20-40-10. Applicability.	Change: regarding their services to: regarding their gifted education services	Language changed for clarity.
	Change: services for students from kindergarten through high school graduation to: ... services for students from kindergarten through twelfth grade	Language changed for consistency throughout the <i>Regulations</i> .

Section number	What has changed	Rationale for change
8VAC20-40-20. Definitions.	Change: accelerated learning aptitudes of eligible or identified students to: ... accelerated learning aptitudes of identified students	Language changed for clarity of terminology.
	Change: beginning with kindergarten through graduation to: ... beginning with kindergarten through twelfth grade	Language changed for consistency throughout the <i>Regulations</i> .
	Change: advanced use of language to: ... advanced use of technical language	Change made for clarification in career and technical aptitude identification.
	Change wording to say: Such students demonstrate or have the potential to demonstrate superior reasoning; persistent intellectual curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression beyond their age-level peers in selected academic areas. Specific academic areas include English, history and social science, mathematics, or science.	Revised definition provides flexibility in selected specific academic aptitudes areas.
	Change: finding students who are eligible for the division's gifted education program. to: ...finding students who are eligible for service options offered through the division's gifted education program.	Language changed for clarity and consistency throughout the <i>Regulations</i> .
	Change: identification and placement committee to: ... identification and placement committee(s)	Language change allows divisions to have multiple committees for identification and placement as may be required by the number of students referred for services. For larger divisions, having only one committee could have fiscal and personnel impacts.
	Change: parents, teachers, professionals, or students to: ... parents or legal guardians, teachers, professionals, students, peers, self, or others	Language change allows for more input into the referral process, possibly increasing the number of potential candidates for screening.
	Change: Delete current definition for "Screening" and insert this definition: "Screening" means the annual process of creating a pool for potential candidates from kindergarten through twelfth grade using multiple criteria through the referral process, review of current assessment data, or information from other sources. Screening is the active search for students who are then referred for the formal identification process.	Current language requires an annual "review of current assessment data for all kindergarten through twelfth grade" at a minimum, as part of the screening process. Language change still requires that screening be an annual process, but provides flexibility to the divisions in terms of the resources used in the screening process.

Section number	What has changed	Rationale for change
	Change: the delivery of appropriate programs provided to eligible students to: ...the delivery of appropriate service or services provided to eligible students	Language changed for consistency with the terminology of 'service options'.
8VAC20-40-40. Screening, referral, identification, and placement.	Change: 8VAC20-40-40. Screening, referral, identification, and placement to: 8VAC20-40-40. Screening, referral, identification, and service .	Language changed to reflect the information provided in the section.
	Change wording to say: A. Each school division shall establish uniform procedures for screening, referring, identifying, and serving students in kindergarten through twelfth grade who are gifted in general intellectual or specific academic aptitude. If the school division elects to identify students in general intellectual aptitude, it shall provide service options from kindergarten through twelfth grade. Identification in a specific academic aptitude area may occur as assessment instruments exist to support identification. If the school division elects to identify students in one or more selected academic aptitude areas, it shall provide service options through twelfth grade.	Revised language requires school divisions selecting identification in general intellectual aptitude to provide service options from kindergarten through twelfth grade. Revised language provides school divisions selecting identification in a specific academic aptitude area flexibility in determining identification and service options. Once identification begins, service options must continue through twelfth grade.
	Change: visual and performing arts aptitude to: ...visual or performing arts aptitude	Language changed for consistency with language used in the visual or performing arts aptitude definition.
	Change: reviewed by the identification and placement committee to: . . . reviewed by the designated identification and placement committee	Language revision allows divisions to establish identification committees in accordance with their needs.
	Change: referrals from school personnel, parents or legal guardians, or other persons of related expertise, as well as peer or self referral to: . . . referrals from parents or legal guardians, teachers, professionals, students, peers, self, or others.	Language change allows for more input into the referral process, possibly increasing the number of potential candidates for screening.

Section number	What has changed	Rationale for change
	Change wording to say: The committee shall consider input from a professional who knows the child. The committee shall include classroom teachers, assessment specialists, gifted program staff, school administrators, or others with credentials or experience in gifted education.	Language change allows divisions to access personnel for committees without overburdening one or more individuals, yet still allowing for specific input from an individual who knows the child.
	Change ...the school division's gifted education program to: ...the school division's gifted education services	Language changed to maintain consistency throughout the <i>Regulations</i> .
	Change ...shall be offered programs or courses to: ...shall be offered service options	Language changed to maintain consistency throughout the <i>Regulations</i> .
	Change: norm-referenced aptitude tests to: . . . nationally norm-referenced aptitude and/or achievement tests	Language changed for clarification and adherence to best practices.
	Change: designed to address general intellectual aptitude or specific academic aptitude to: ... designed to address general intellectual aptitude	Specific language addresses general intellectual aptitude and not necessarily specific academic aptitude.
	Change: norm-referenced aptitude test to: . . . nationally norm-referenced aptitude test	Language changed for clarification and adherence to best practices.
	Change wording to say: If a program is designed to address specific academic aptitude, an individually administered or group-administered, nationally norm-referenced aptitude or achievement test shall be included as one of the three measures used in the school division's identification procedures.	Language changed for clarification and adherence to best practices.
	Add New: If a program is designed to address either the visual or performing arts or career and technical aptitude, a portfolio or other performance assessment measure in the specific aptitude area shall be included as part of the data reviewed by the identification and placement committee.	Language addition for clarification and adherence to best practices. Basic change in numbering sequence due to other sequential changes.
	Change: Within 60 business days of the receipt of a referral to: . . . Within 90 instructional days, beginning with the receipt of a parent's or legal guardian's consent for assessment,	A 90 instructional day time frame will help to ensure 9-week assessment data are available and all aspects of the identification process are addressed. Economic Impact Analysis concurs.

Section number	What has changed	Rationale for change
	Change: offered placement in a classroom or program setting to: ... offered placement in an instructional setting	Revised language allows divisions to provide a variety of service options that are not confined to a classroom or a program.
8VAC20-40-55. Parental rights for notification, consent, and appeal.	Change: within ten business days to: ...within ten instructional days	Provides additional time for parents to gather data for an appeal. Economic Impact Analysis concurs.
	Change: in writing within ten business days to: ...in writing within ten instructional days	Provides additional time for schools to notify parents of the appeals process. Economic Impact Analysis concurs.
8VAC20-40-60. Local plan, local advisory committee, and annual report.	Change wording to say: A. Each school board shall submit a comprehensive plan for the education of gifted students to the Department of Education for technical review on a schedule determined by the Department. Each school board shall approve a comprehensive plan for the education of gifted students that includes the components identified in these regulations.	Language change requires submission of local plan to the DOE for technical review on a schedule determined by the DOE and provides flexibility to school boards to set their own schedule for review and approval of their gifted education plan.
	Change: personnel preparation to: ... professional development	Language changed for clarification and adherence to best practices.
	Change: visual and performing arts aptitude to: ...visual or performing arts aptitude	Language changed for clarification and adherence to definition.
	Change wording to say: Assurances that (i) the selected and administered testing and assessment materials have been evaluated by the developers for cultural, racial, and linguistic biases;	Language revised to support consistency within VDOE documents.
	Change: Parents and legal guardians shall receive assessment of each gifted student's intellectual and academic growth. to: ... each gifted student's academic growth.	Language changed for clarification and adherence to best practices.
	Change: school division's program of differentiated curriculum and instruction demonstrating accelerated and advanced content within programs or courses to: ... school division's differentiated curriculum and instruction demonstrating accelerated and advanced content	Language changed for clarification.
	Change: Procedures for the annual evaluation of effectiveness to: Procedures for the annual review of effectiveness	Language changed for clarification and consistency.

Section number	What has changed	Rationale for change
	Change wording to say: . . . including review of student outcomes and the academic growth of gifted students.	The ability of a division to measure 'intellectual growth' is questionable.
	Change: Such evaluation shall be based on multiple criteria and shall include multiple sources of information for gifted students to: ...Such review shall be based on multiple criteria and shall include multiple sources of information.	Language changed for clarification.
8VAC20-40-70. Funding.	Add new: "Funds designated by the Virginia General Assembly for the education of gifted students shall be used by school divisions in accordance with the provisions of the Appropriation Act."	Funding for the education of gifted students is governed by the Appropriation Act, not the <i>Regulations</i> .

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Issue	Source	Comments	VDOE Response
8VAC20-40-10 Applicability Paragraph 1 <i>25 comments</i>	2 Parents 4 Teachers 9 Gifted Coordinators 6 Gifted Adv. Boards 1 School Admin. 1 Gifted Org. Rep. 2 Concerned Citizens <i>(25 comments)</i>	Change: services for students from kindergarten through high school graduation to: ... services for students from kindergarten through twelfth grade	Change made as per public comment.
8VAC20-40-20 Definitions <i>431 comments</i>	1 Parent <i>(1 comment)</i>	Request: Removal of language, "rapid acquisition and mastery of facts," throughout the <i>Regulations</i> as this phrase may operate to deny adequate protection for gifted children with certain learning disabilities	No change.
Paragraph 2	2 Parents 4 Teachers 9 Gifted Coordinators 6 Gifted Adv. Boards 1 School Admin. 1 Gifted Org. Rep. 2 Concerned Citizens <i>(25 comments)</i>	Change: accelerated learning aptitudes of eligible or identified students to: ... accelerated learning aptitudes of identified students	Change made as per public comment.

Issue	Source	Comments	VDOE Response
Paragraph 4	2 Parents 4 Teachers 9 Gifted Coordinators 6 Gifted Adv. Boards 1 School Admin. 1 Gifted Org. Rep. 2 Concerned Citizens (25 comments)	Change: beginning with kindergarten through graduation to: ...beginning with kindergarten through twelfth grade	Change made as per public comment.
Paragraph 4.2	11 Parents 12 Teachers 16 Gifted Coordinators 10 Gifted Adv. Boards 8 School Admin. 2 Gifted Org. Rep. 7 Concerned Citizens (66 comments)	Change: selected academic areas that include English, history and social science, mathematics, and science. to: ...selected academic areas as defined by one or more of the following: English/language arts, mathematics, history/social science, or science.	VDOE recommends the following language change: Such students demonstrate or have the potential to demonstrate superior reasoning; persistent intellectual curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression beyond their age-level peers in selected academic areas. Specific academic areas include English, history and social science, mathematics, or science.
Paragraph 4.3	2 Parents 4 Teachers 9 Gifted Coordinators 6 Gifted Adv. Boards 1 School Admin. 1 Gifted Org. Rep. 2 Concerned Citizens (25 comments)	Change: advanced use of language to: ...advanced use of technical language	Change made as per public comment.
Paragraph 5	2 Parents 4 Teachers 9 Gifted Coordinators 6 Gifted Adv. Boards 1 School Admin. 1 Gifted Org. Rep. 2 Concerned Citizens (25 comments)	Change: finding students who are eligible for the division's gifted education program. to: ...finding students who are eligible for service options offered through the division's gifted education program.	Change made as per public comment.
Paragraph 5	11 Parents 12 Teachers 17 Gifted Coordinators 11 Gifted Adv. Boards 8 School Admin. 3 Gifted Org. Rep. 7 Concerned Citizens (69 comments)	Change: identification and placement committee to: ...identification and placement committee(s)	Change made as per public comment.
Paragraph 9	11 Parents 12 Teachers 17 Gifted Coordinators 11 Gifted Adv. Boards 2 School Admin. 2 Gifted Org. Rep. 7 Concerned Citizens (62 comments)	Change: parents, teachers, professionals, or students to: ...parents or legal guardians, teachers, professionals, students, peers, self, or others	Change made as per public comment.

Issue	Source	Comments	VDOE Response
Paragraph 10	11 Parents 12 Teachers 17 Gifted Coordinators 12 Gifted Adv. Boards 2 School Admin. 2 Gifted Org. Rep. 7 Concerned Citizens <i>(63 comments)</i>	Change: Delete current definition for "Screening" and insert this definition: "Screening" means the annual process of creating a pool for potential candidates from kindergarten through twelfth grade using multiple criteria through the referral process, review of current assessment data, or information from other sources. Screening is the active search for students who are then referred for the formal identification process.	Change made as per public comment.
Paragraph 11	13 Parents 12 Teachers 14 Gifted Coordinators 11 Gifted Adv. Boards 9 School Admin. 2 Gifted Org. Rep. 7 Concerned Citizens <i>(68 comments)</i>	Change: the delivery of appropriate programs provided to eligible students to: ...the delivery of appropriate service or services provided to eligible students	Change made as per public comment.
Paragraph 12	1 Parent <i>(1 comment)</i>	Request: references to measurement of student outcomes reflect the definition's use of achievement tests as measurements of outcomes	No change.

Issue	Source	Comments	VDOE Response
8VAC20-40-40. Screening, referral, identification, and placement. <i>765 comments</i> Paragraph A	23 Parents 27 Teachers 15 Gifted Coordinators 17 Gifted Adv. Boards 1 School Board 11 School Admin. 6 Gifted Org. Rep. 1 Univ. Professor 1 Gov. Official 15 Concerned Citizens <i>(117 comments)</i>	Change: procedures for identification and service in, at a minimum, English, history and social science, mathematics, and science to: ...procedures for identification and service in one or more of the following: English/ language arts, mathematics, history/social science, or science.	VDOE recommends the following language change: A. Each school division shall establish uniform procedures for screening, referring, identifying, and serving students in kindergarten through twelfth grade who are gifted in general intellectual or specific academic aptitude. If the school division elects to identify students in general intellectual aptitude, it shall provide service options from kindergarten through twelfth grade. Identification in a specific academic aptitude area may occur as assessment instruments exist to support identification. If the school division elects to identify students in one or more selected academic aptitude areas, it shall provide service options through twelfth grade.
Paragraph A	11 Parents 12 Teachers 17 Gifted Coordinators 9 Gifted Adv. Boards 2 School Admin. 6 Gifted Org. Rep. 7 Concerned Citizens <i>(64 comments)</i>	Change: visual and performing arts aptitude to: ...visual or performing arts aptitude	Change made as per public comment.
Paragraph A	2 Gifted Adv. Boards <i>(2 comments)</i>	Change: identification of general intellectual or specific aptitude to: . . . identification of general intellectual and specific aptitude	No change.
Paragraph B	2 Gifted Adv. Boards <i>(2 comments)</i>	Change: norm-referenced aptitude tests to: . . . norm-referenced aptitude tests and norm-referenced achievements or the Discrepancy Model	No change.
Paragraph B	10 Parents 8 Teachers 7 Gifted Coordinators 7 Gifted Adv. Boards 2 School Admin. 5 Gifted Org. Rep. 5 Concerned Citizens <i>(44 comments)</i>	Change: reviewed by the identification and placement committee to: . . . reviewed by the designated identification and placement committee	Change made as per public comment.

Issue	Source	Comments	VDOE Response
Paragraph C	11 Parents 12 Teachers 17 Gifted Coordinators 11 Gifted Adv. Boards 2 School Admin. 6 Gifted Org. Rep. 7 Concerned Citizens (66 comments)	Change: referrals from school personnel, parents or legal guardians, or other persons of related expertise, as well as peer or self referral to: . . . referrals from parents or legal guardians, teachers, professionals, students, peers, self, or others.	Change made as per public comment.
Paragraph D	19 Parents 11 Teachers 4 Gifted Coordinators 2 Concerned Citizens (36 comments)	Change: The committee shall include a professional who knows the child . . . to: The Committee shall include members of the eligibility committee . . . with teacher and parent input provided.	VDOE recommends the following language change: The committee shall consider input from a professional who knows the child. The committee shall include classroom teachers, assessment specialists, gifted program staff, school administrators, or others with credentials or experience in gifted education.
Paragraph D.1	1 Parent (1 comment)	Supports: language that requires identification be based on multiple criteria and designed to seek out students for whom accurate identification may be affected	No specific change requested.
Paragraph D.2	11 Parents 12 Teachers 17 Gifted Coordinators 11 Gifted Adv. Boards 2 School Admin. 5 Gifted Org. Rep. 9 Concerned Citizens (67 comments)	Change ...the school division's gifted education program to: ...the school division's gifted education services	Change made as per public comment.
Paragraph D.2	11 Parents 11 Teachers 17 Gifted Coordinators 11 Gifted Adv. Boards 2 School Admin. 6 Gifted Org. Rep. 9 Concerned Citizens (67 comments)	Change ...shall be offered programs or courses to: ...shall be offered service options	Change made as per public comment.
Paragraph D.3	2 Concerned Citizens (2 comments)	Change: include at least three measures from the following category to: . . . include at least four measures from the following category.	No change.
Paragraph D.3.e	2 Parents 5 Teachers 10 Gifted Coordinators 8 Gifted Adv. Boards 2 School Admin. 3 Gifted Org. Rep. 4 Concerned Citizens (34 comments)	Change: norm-referenced aptitude tests to: . . . nationally norm-referenced aptitude and/or achievement tests	Change made as per public comment.

Issue	Source	Comments	VDOE Response
Paragraph D.4	2 Parents 4 Teachers 10 Gifted Coordinators 6 Gifted Adv. Boards 1 School Admin. 1 Gifted Org. Rep. 2 Concerned Citizens (26 comments)	Change: designed to address general intellectual aptitude or specific academic aptitude to: ... designed to address general intellectual aptitude	Change made as per public comment.
Paragraph D.4	2 Parents 4 Teachers 10 Gifted Coordinators 7 Gifted Adv. Boards 1 School Admin. 1 Gifted Org. Rep. 2 Concerned Citizens (27 comments)	Change: norm-referenced aptitude test to: . . . nationally norm-referenced aptitude test	Change made as per public comment.
Paragraph D.5	2 Parents 4 Teachers 12 Gifted Coordinators 6 Gifted Adv. Boards 1 School Admin. 1 Gifted Org. Rep. 2 Concerned Citizens (28 comments)	Change wording to say: If a program is designed to address specific academic aptitude, an individually administered or group-administered, nationally norm-referenced aptitude or achievement test shall be included as one of the three measures used in the school division's identification procedures.	Change made as per public comment.
Paragraph D Add a new Number 6	2 Parents 4 Teachers 10 Gifted Coordinators 6 Gifted Adv. Boards 1 School Admin. 1 Gifted Org. Rep. 2 Concerned Citizens (26 comments)	Add New: If a program is designed to address either the visual or performing arts or career and technical aptitude, a portfolio or other performance assessment measure in the specific aptitude area shall be included as part of the data reviewed by the identification and placement committee.	Change made as per public comment.
Paragraph E	14 Parents 19 Teachers 16 Gifted Coordinators 13 Gifted Adv. Boards 1 School Board 2 School Admin. 5 Gifted Org. Rep. 1 Univ. Professor 1 Gov. Official 11 Concerned Citizens (83 comments)	Change: Within 60 business days of the receipt of a referral to: . . . Within 90 instructional days, beginning with the receipt of a parent's or legal guardian's consent for assessment,	Change made as per public comment.

Issue	Source	Comments	VDOE Response
Paragraph E	9 Parents 8 Teachers 7 Gifted Coordinators 5 Gifted Adv. Boards 2 School Admin. 5 Gifted Org. Rep. 5 Concerned Citizens (41 comments)	Change: Within 60 business days of the receipt of a referral to: . . . Within 60 school days	No change.
Paragraph E	1 Gifted Adv. Board (1 comment)	Change: Within 60 business days of the receipt of a referral to: ...Within 60 business days beginning with the receipt of a signed permission to evaluate form from the parent or guardian	No change.
Paragraph E	2 Parents 4 Teachers 10 Gifted Coordinators 6 Gifted Adv. Boards 1 School Admin. 1 Gifted Org. Rep. 2 Concerned Citizens (26 comments)	Change: offered placement in a classroom or program setting to: ... offered placement in an instructional setting	Change made as per public comment.
Paragraph E	1 Parent (1 comment)	Supports: 60 day notification period.	No specific change requested.
Paragraph E.1	2 Gifted Adv. Boards (2 comments)	Change: Appropriately differentiated curriculum and instruction to: Appropriately differentiated curriculum and direct instruction	No change.
Paragraph E.2	2 Gifted Adv. Boards (2 comments)	Change: Monitored and assessed student outcomes that are reported to the parents and legal guardians. to: Monitors and assesses student outcomes, and reports results to the parents and legal guardians.	No change.
8VAC20-40-55. Parental rights for notification, consent, and appeal. 94 comments Paragraph B	1 Gifted Adv Board (1 comment)	Supports: changes to this section	No specific change requested.
Paragraph B	2 Parents 4 Teachers 10 Gifted Coordinators 7 Gifted Adv. Boards 1 School Admin. 1 Gifted Org. Rep. 2 Concerned Citizens (27 comments)	Change: within ten business days to: ...within ten instructional days	Change made as per public comment.

Issue	Source	Comments	VDOE Response
Paragraph B.1	23 Parents 14 Teachers 12 Gifted Coordinators 10 Gifted Adv. Boards 3 School Admin. 2 Gifted Org. Rep. 2 Concerned Citizens (66 comments)	Change: in writing within ten business days to: ...in writing within ten instructional days	Change made as per public comment.
8VAC20-40-60. Local plan, local advisory committee, and annual report. 1351 comments Paragraph A	115 Parents 71 Teachers 41 Gifted Coordinators 31 Gifted Adv. Boards 4 School Boards 11 School Admin. 14 Gifted Org. Rep. 7 Univ. Professors 1 Superintendent 1 Gov. Official 1 Student 37 Concerned Citizens (334 comments)	Remove: review and approve annually a comprehensive plan...	VDOE recommends the following language change: A. Each school board shall submit a comprehensive plan for the education of gifted students to the Department of Education for technical review on a schedule determined by the Department. Each school board shall approve a comprehensive plan for the education of gifted students that includes the components identified in these regulations.
Paragraph A	117 Parents 78 Teachers 42 Gifted Coordinators 29 Gifted Adv. Boards 2 School Boards 8 School Admin. 17 Gifted Org. Rep. 8 Univ. Professors 1 Gov. Official 1 Student 62 Concerned Citizens (365 comments)	Reinstate: Each school division shall submit to the Department of Education for approval a plan for the education of gifted students...	Language changes are reflected in the initial sentence of paragraph A. in this portion of the <i>Regulations</i> . See prior comment.
Paragraph A	1 School Board Organization Representative (1 comment)	Supports: Each school board shall review and approve annually a comprehensive plan for the education of gifted students that includes the components identified in these <i>Regulations</i> .	No specific change requested.
Paragraph A	96 Parents 63 Teachers 36 Gifted Coordinators 25 Gifted Adv. Boards 2 School Boards 10 School Admin. 9 Gifted Org. Rep. 7 Univ. Professors 1 Superintendent 1 Gov. Official 1 Student 32 Concerned Citizens (283 comments)	Request: make the local plan a five-year local plan as is currently required	No change.
Paragraph A	1 Parent (1 comment)	Request: the local plan be revised a minimum of every three years	No change.

Issue	Source	Comments	VDOE Response
Paragraph A	1 Concerned Citizen (1 comment)	Supports: require that local plan be posted on the school division's Web site	No specific regulatory change requested.
Paragraph A.2	2 Parents 4 Teachers 10 Gifted Coordinators 6 Gifted Adv. Boards 1 School Admin. 1 Gifted Org. Rep. 3 Concerned Citizens (27 comments)	Change: personnel preparation to: ... professional development	Change made as per public comment.
Paragraph A.3	11 Parents 12 Teachers 17 Gifted Coordinators 11 Gifted Adv. Boards 2 School Admin. 6 Gifted Org. Rep. 7 Concerned Citizens (66 comments)	Change: visual and performing arts aptitude to: ...visual or performing arts aptitude	Change made as per public comment.
Paragraph A.7	19 Parents 10 Teachers 5 Gifted Coordinators 7 Gifted Adv. Boards 1 School Admin. 3 Concerned Citizens (45 comments)	Change: materials selected and administered are free of cultural, racial, and linguistic bias to: materials selected and administered are sensitive to cultural, racial, and linguistic differences . ..	VDOE recommends the following language change: Assurances that (i) the selected and administered testing and assessment materials have been evaluated by the developers for cultural, racial, and linguistic biases;
Paragraph A.7	1 Parent (1 comment)	Supports: changes addressing the assurances that testing and assessment materials will not discriminate against children affected with disabilities	No specific change requested.
Paragraph A.8	1 Parent (1 comment)	Supports: changes that IEPs will be incorporated into the special education student's gifted education services.	No specific change requested.
Paragraph A.10	3 Parents 4 Teachers 10 Gifted Coordinators 6 Gifted Adv. Boards 2 School Admin. 1 Gifted Org. Rep. 3 Concerned Citizens (29 comments)	Change: Parents and legal guardians shall receive assessment of each gifted student's intellectual and academic growth. to: ... each gifted student's academic growth.	Change made as per public comment.
Paragraph A.10	1 Gifted Coordinator (1 comment)	Request: removal of language that proposes specific day and week time frame configurations for services	No change.

Issue	Source	Comments	VDOE Response
Paragraph A.10	3 Parents (3 comments)	Supports: parents and legal guardians shall receive assessment of each gifted student's intellectual and academic growth.	No specific change requested.
Paragraph A.11	2 Parents 4 Teachers 10 Gifted Coordinators 6 Gifted Board Rep. 1 School Admin. 1 Gifted Adv. Board 2 Concerned Citizens (26 comments)	Change: school division's program of differentiated curriculum and instruction demonstrating accelerated and advanced content within programs or courses to: ...school division's differentiated curriculum and instruction demonstrating accelerated and advanced content	Change made as per public comment.
Paragraph A.13	1 Gifted Adv. Board (1 comment)	Change: reference to 8VAC20-542-310 should be changed to: 8VAC20-542-10 et. seq. Regulations Governing Review and Approval of Education Programs in Virginia.	No change.
Paragraph A.14	2 Parents 4 Teachers 10 Gifted Coordinators 7 Gifted Adv. Boards 1 School Admin. 1 Gifted Org. Rep. 2 Concerned Citizens (27 comments)	Change: Procedures for the annual evaluation of effectiveness to: Procedures for the annual review of effectiveness	Change made as per public comment.
Paragraph A.14	12 Parents 13 Teachers 19 Gifted Coordinators 11 Gifted Adv. Boards 2 School Admin. 6 Gifted Org. Rep. 11 Concerned Citizens (74 comments)	Remove: including review of student outcomes and the intellectual and academic growth of gifted students.	VDOE recommends the following language change: . . . including review of student outcomes and the academic growth of gifted students.
Paragraph A.14	2 Parents 4 Teachers 10 Gifted Coordinators 6 Gifted Adv. Boards 1 School Admin. 1 Gifted Org. Rep. 2 Concerned Citizens (26 comments)	Change: Such evaluation shall be based on multiple criteria and shall include multiple sources of information for gifted students to: ...Such review shall be based on multiple criteria and shall include multiple sources of information.	Change made as per public comment.

[illegible]

Issue	Source	Comments	VDOE Response
	8 Parents 4 Teachers 2 Gifted Coordinators 1 Concerned Citizen (15 comments)	Request: school divisions have the flexibility to administer assessments that align with the programs and services offered by a particular division	No change.
	1 Concerned Citizen (1 comment)	Request specific statement: All tests (written and oral) given to children that are referred for gifted and talented services should be individually administered.	No change.
	19 Parents 10 Teachers 3 Gifted Coordinators 1 Concerned Citizen (33 comments)	Request: remove statements within the definition of 'student outcomes' and throughout 8VAC20-40-60 that introduces language more in line with an IEP approach to monitoring and documenting student outcomes	Changes to the proposed <i>Regulations</i> may address this comment. No action taken.
	19 Parents 11 Teachers 3 Gifted Coordinators 1 Concerned Citizen (34 comments)	Request: review of any student achievement data should be made at key points throughout the K-12 continuum and not annually as stated	Changes to the proposed <i>Regulations</i> may address this comment. No action taken.
	19 Parents 12 Teachers 4 Gifted Coordinators 2 Concerned Citizens (37 comments)	Request: school divisions should have the option of providing gifted services on a regular basis in the primary grades (K-2) or beginning formal screening, referral, and gifted identification processes in the primary grades (K-2)	No change.
	2 Gifted Coordinators 1 Gifted Adv. Board 1 Concerned Citizen (4 comments)	Supports: changes to the definitions	No specific change requested.
	1 Gifted Coordinator (1 comment)	Request: reference to local advisory committee should note that the committee can be part of a broader district 'school improvement' team as long as it meets the two criteria mentioned	Current language supports best practices and allows flexibility in the establishment of a local advisory committee. VDOE recommends retaining current language. No action taken.

Issue	Source	Comments	VDOE Response
	2 Parents 1 Teacher 2 Gifted Coordinators 1 Concerned Citizen (6 comments)	Request: provide assurances that schools will set in place acceleration options with procedures and safeguards that allow students to learn at their own pace in accordance with the Code of Virginia § 22.1-253.13C4	The Code of Virginia § 22.1-253.13:4D5 already provides for the establishment of procedures to facilitate a student's educational acceleration under certain conditions. No action taken.
	1 Parent (1 comment)	Revise: <i>Regulations</i> to encompass rewards through students' GPAs to accurately reflect the additional demands of their programs	Local divisions have the authority to assign course credit and GPA values. No action taken.
	1 Univ. Professor (1 comment)	Request: assurances that the revisions will not allow for parents to request special placements in expensive programs to meet the needs of their LD/gifted child	Current language supports services for twice-exceptional students in accordance with their needs. No action taken.
	1 Gifted Coordinator (1 comment)	Remove any language throughout the <i>Regulations</i> that is related to individual documentation of student outcomes in addition to standard reporting systems used for the general student population	Current language aligns with best practices. No action taken.
	3 Univ. Professors 1 Concerned Citizen (4 comments)	Revise: include language that supports professional personnel that are educated in gifted education	Current language reflects gifted education endorsement competencies. No action taken.
	1 Gifted Adv. Board (1 comment)	Supports: move toward strengthening the implementation of gifted services after students are identified	No specific regulatory change requested.
	1 Gifted Adv. Board (1 comment)	Request: specific language that addresses communication, like a differentiated education plan or a differentiated learning plan, to inform, guide, and ensure differentiated services are available to identified students	Proposed <i>Regulations</i> support differentiated services for gifted students. No action taken.

Issue	Source	Comments	VDOE Response
	1 Univ. Professor (1 comment)	Revise: supports the oversight of programs for gifted and dual-exceptional students but criteria for identification should be reinstated	Current language provides definitions and criteria for identification. No action taken.
	1 Parent (1 comment)	Request: use language that strengthens the plan, changing the 'should' to 'shall'	Current language allows local divisions to determine the services options they provide gifted students. No action taken.
	1 Parent (1 comment)	Request: statement that allows for early entrance into kindergarten for gifted students in accordance with the Code of Virginia § 22.1-199. Kindergarten programs suitable for certain children.	Local school divisions are responsible for compliance with the Code of Virginia § 22.1-199 concerning early entrance into kindergarten. Gifted education identification and services options apply to students starting in kindergarten. No action taken.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Current requirement	Proposed change and rationale
8VAC20-40-10. Applicability.	This chapter shall apply to all local school divisions in the Commonwealth.	This chapter shall apply to all local school divisions in the Commonwealth, regarding their gifted education services for students from kindergarten through twelfth grade. The proposed language change clarifies the existing language and moves applicability language from 8VAC20-40-30 to this section for clarification and elimination of redundancy.
8VAC20-40-20. Definitions.	The words and terms, when used in this chapter, shall have the following meanings, unless the content clearly indicates otherwise:	The words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise: The proposed language change modifies the definition to indicate that the definitions apply to the given term, unless the context clearly indicates otherwise.

Current section number	Current requirement	Proposed change and rationale
8VAC20-40-20. Definitions.	"Appropriately differentiated curricula" for gifted students refer to curricula designed in response to their cognitive and effective needs. Such curricula emphasis on both accelerative and enrichment opportunities for (i) advanced content and pacing of instruction, (ii) original research or production, (iii) problem finding and solving, (iv) higher level thinking that leads to the generation of products, and (v) a focus on issues, themes, and ideas within and across areas of study.	"Appropriately differentiated curriculum and instruction" means curriculum and instruction adapted or modified to accommodate the accelerated learning aptitudes of identified students in their areas of strength. Such curriculum and instructional strategies provide accelerated and enrichment opportunities that recognize gifted students' needs for (i) advanced content and pacing of instruction; (ii) original research or production; (iii) problem finding and solving; (iv) higher level thinking that leads to the generation of products; and (v) a focus on issues, themes, and ideas within and across areas of study. Such curriculum and instruction are offered continuously and sequentially to support the achievement of student outcomes, and provide support necessary for these students to work at increasing levels of complexity that differ significantly from those of their age-level peers. The proposed language clarifies the existing language and reflects current research appropriate for differentiated curriculum and instruction for gifted students.
8VAC20-40-20. Definitions.	No current requirement.	"Eligible student" means a student who has been identified as gifted by the identification and placement committee for the school division's gifted education program. The proposed revision adds new language to establish that "identification" and "eligibility" are interchangeable terms.
8VAC20-40-20. Definitions.	"Gifted students" means those students in public elementary and secondary schools beginning with kindergarten through graduation whose abilities and potential for accomplishment are so outstanding that they require special programs to meet their educational needs. These students will be identified by professionally qualified persons through the use of multiple criteria as having potential or demonstrated abilities and who have evidence of high performance capabilities, which may include leadership, in one or more of the following areas:	"Gifted students" means those students in public elementary, middle, and secondary schools beginning with kindergarten through twelfth grade who demonstrate high levels of accomplishment or who show the potential for higher levels of accomplishment when compared to others of the same age, experience, or environment. Their aptitudes and potential for accomplishment are so outstanding that they require special programs to meet their educational needs. These students will be identified by professionally qualified persons through the use of multiple criteria as having potential or demonstrated aptitudes in one or more of the following areas: The proposed revision adds clarification to the definition of "Gifted students" to incorporate current research and to mirror the language in the definition for eligible students.

Current section number	Current requirement	Proposed change and rationale
8VAC20-40-20. Definitions.	1. Intellectual aptitude or aptitudes. Students with advanced aptitude or conceptualization whose development is accelerated beyond their age peers as demonstrated by advanced skills, concepts, and creative expression in multiple general intellectual ability or in specific intellectual abilities.	1. General intellectual aptitude. Such students demonstrate or have the potential to demonstrate superior reasoning; persistent intellectual curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression across a broad range of intellectual disciplines beyond their age-level peers. The proposed revision clarifies the existing language to incorporate current research.
8VAC20-40-20. Definitions.	2. Specific academic aptitude. Students with specific aptitudes in selected academic areas: mathematics; the sciences; or the humanities as demonstrated by advanced skills, concepts, and creative expression in those areas.	2. Specific academic aptitude. Such students demonstrate or have the potential to demonstrate superior reasoning; persistent intellectual curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression beyond their age-level peers in selected academic areas. Specific academic areas include English, history and social science, mathematics, or science. The proposed revision provides flexibility in selected specific academic aptitudes areas.
8VAC20-40-20. Definitions.	3. Technical and practical arts aptitude. Students with specific aptitudes in selected technical or practical arts as demonstrated by advanced skills and creative expression in those areas to the extent they need and can benefit from specifically planned educational services differentiated from those provided by the general program experience.	3. Career and technical aptitude. Such students demonstrate or have the potential to demonstrate superior reasoning; persistent technical curiosity; advanced use of technical language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression beyond their age-level peers in career and technical fields. The proposed revision clarifies the existing language to incorporate current research.
8VAC20-40-20. Definitions.	4. Visual or performing arts aptitude. Students with specific aptitudes in selected visual or performing arts as demonstrated by advanced skills and creative expression who excel consistently in the development of a product or performance in any of the visual and performing arts to the extent that they need and can benefit from specifically planned educational services differentiated from those generally provided by the general program experience.	4. Visual or performing arts aptitude. Such students demonstrate or have the potential to demonstrate superior creative reasoning and imaginative expression; persistent artistic curiosity; and advanced acquisition and mastery of techniques, perspectives, concepts, and principles beyond their age-level peers in visual or performing arts. The proposed revision clarifies the existing language to incorporate current research.

Current section number	Current requirement	Proposed change and rationale
8VAC20-40-20. Definitions.	"Identification" is the process of reviewing student data collected at the screening level and conducting further evaluation of student potential to determine the most qualified students for the specific gifted program available.	"Identification" means the multistaged process of finding students who are eligible for service options offered through the division's gifted education program. The identification process begins with a divisionwide screening component that is followed by a referral component, and that concludes with the determination of eligibility by the school division's identification and placement committee(s). The identification process includes the review of valid and reliable student data based on criteria established and applied consistently by the school division. The process shall include the review of information or data from multiple sources to determine whether a student's aptitudes and learning needs are most appropriately served through the school division's gifted education program. The proposed revision clarifies the existing language to incorporate current research and flexibility to school divisions in selection of identification and placement committee members.
8VAC20-40-20. Definitions.	"Identification/Placement Committee" means a standing committee which is composed of a professional who knows the child, classroom teacher or teachers, others representing assessment specialists, gifted program staff and school administration, and others deemed appropriate. This committee may operate at the school or division level. In either case, consistent criteria must be established for the division.	"Identification and placement committee" means the building-level or division-level committee that shall determine a student's eligibility for the division's gifted education program, based on the student's assessed aptitude and learning needs. The identification and placement committee shall determine which of the school division's service options are appropriate for meeting the learning needs of the eligible student. The proposed revision clarifies the existing language that the building- or division-level committee determines eligibility and service options based on the student's assessed aptitude and learning needs.
8VAC20-40-20. Definitions.	No current requirement.	"Learning needs of gifted students" means gifted students' needs for advanced and complex content that is paced and sequenced to respond to their persistent intellectual, artistic, or technical curiosity; exceptional problem-solving abilities; rapid acquisition and mastery of information; conceptual thinking processes; and imaginative expression across a broad range of disciplines. The proposed new language adds a definition of "Learning needs of gifted students" to incorporate current research.
8VAC20-40-20. Definitions.	"Placement" means the determination of the appropriate educational option for each eligible student.	"Placement" means the determination of the appropriate educational options for each eligible student. The proposed revision provides clarity and consistency.

Current section number	Current requirement	Proposed change and rationale
8VAC20-40-20. Definitions.	No current requirement.	"Referral" means the formal and direct process that parents or legal guardians, teachers, professionals, students, peers, self, or others use to request that a kindergarten through twelfth-grade student be assessed for gifted education program services. The proposed new language adds a definition of "Referral" to incorporate current research.
8VAC20-40-20. Definitions.	"Screening" is the process of creating the pool of potential candidates using multiple criteria through the referral process, review of test data, or from other sources. Screening is the active search for students who should be evaluated for identification.	"Screening" means the annual process of creating a pool for candidates from kindergarten through twelfth grade using multiple criteria through the referral process, the review of current assessment data, or other information from other sources. Screening is the active search for students who are then referred for the formal identification process. The proposed revision clarifies the existing language to incorporate current research regarding the annual process of screening.
8VAC20-40-20. Definitions.	"Service options" include the instructional approach or approaches, setting or settings, and staffing selected for the delivery of appropriate service or services that are based on student needs.	"Service options" means the instructional approaches, settings, and staffing selected for the delivery of appropriate service or services provided to eligible students based on their assessed needs in their areas of strength. The proposed revision clarifies the existing language to incorporate current research.
8VAC20-40-20. Definitions.	"Student outcomes" are specified expectations based on the assessment of student cognitive and affective needs. Such outcomes should articulate expectations for advanced levels of performance for gifted learners.	"Student outcomes" means the advanced achievement and performance expectations established for each gifted student, through the review of the student's assessed learning needs and the goals of the program of study, that are reviewed and reported to parents or legal guardians. The proposed revision clarifies the existing language to incorporate current research.
9VAC20-40-30. Applicability.	Part II Responsibilities of the Local School Divisions 8VAC20-40-30. Applicability. The requirements set forth in this part are applicable to local school divisions providing educational services for gifted students in elementary and secondary schools from kindergarten through graduation. Statutory Authority §§22.1-16 and 22.1-253.13:1 of the Code of Virginia.	Repealed. The proposed revision moves some of this language to 8VAC20-40-10 and deletes the remainder to avoid redundancy.
8VAC20-40-40. Identification.	8VAC20-40-40. Identification.	8VAC20-40-40. Screening, referral, identification, and service. The proposed revision to the section title reflects the broader section coverage of screening, referral, identification, and service.

Current section number	Current requirement	Proposed change and rationale
8VAC20-40-40. Identification.	A. Each school division shall establish a uniform procedure with common criteria for screening and identification of gifted students. If the school division elects to identify students with specific academic aptitudes, they shall include procedures for identification and service in mathematics, science, and humanities. These procedures will permit referrals from school personnel, parents or legal guardians, other persons of related expertise, peer referral and self-referral of those students believed to be gifted. Pertinent information, records, and other performance evidence of referred students will be examined by a building level or division level identification committee. Further, the committee or committees will determine the eligibility of the referred students for differentiated programs. Students who are found to be eligible by the Identification/Placement Committee shall be offered a differentiated program by the school division.	A. Each school division shall establish uniform procedures for screening, referring, identifying, and serving students in kindergarten through twelfth grade who are gifted in general intellectual or specific academic aptitude. If the school division elects to identify students in general intellectual aptitude, it shall provide service options from kindergarten through twelfth grade. Identification in a specific academic aptitude area may occur as assessment instruments exist to support identification. If the school division elects to identify students in one or more selected academic aptitude areas, it shall provide service options through twelfth grade. School divisions may identify and serve gifted students in career and technical or visual or performing arts aptitude, or both, at their discretion. The proposed language requires school divisions selecting identification in general intellectual aptitude to provide service options from kindergarten through twelfth grade. The proposed language provides school divisions selecting identification in a specific academic aptitude area flexibility in determining identification and service options. Once identification begins, service options must continue through twelfth grade.
8VAC20-40-40. Identification.	B. Each school division shall maintain a division review procedure for students whose cases are appealed. This procedure shall involve individuals, the majority of whom did not serve on the Identification/Placement Committee.	These uniform procedures shall include a screening process that requires instructional personnel to review, at a minimum, current assessment data on each kindergarten through twelfth-grade student annually. Some data used in the screening process may be incorporated into multiple criteria reviewed by the designated identification and placement committee to determine eligibility, but those data shall not replace norm-referenced aptitude test data. The proposed revision clarifies the screening process.
8VAC20-40-40. Identification.	No current requirement.	C. These uniform procedures shall permit referrals from parents or legal guardians, teachers, professionals, students, peers, self, or others. Such referrals shall be accepted for kindergarten through twelfth-grade students. The proposed new language allows more opportunities for referrals.

Current section number	Current requirement	Proposed change and rationale
8VAC20-40-40. Identification.	No current requirement.	<p>D. An identification and placement committee shall review pertinent information, records, and other performance evidence for referred students. The committee shall consider input from a professional who knows the child. The committee shall include classroom teachers, assessment specialists, gifted program staff, school administrators, or others with credentials or experience in gifted education. The committee shall (i) review data from multiple sources selected and used consistently within the division to assess students' aptitudes in the areas of giftedness the school division serves, (ii) determine whether a student is eligible for the division's services, and (iii) determine which of the school division's service options match the learning needs of the eligible student. The committee may review valid and reliable data administered by another division for a transfer student who has been identified previously. The proposed new language requires the identification and placement committee to review multiple data sources to determine eligibility and service options for identified students and transfer students.</p>
8VAC20-40-40. Identification.	No current requirement.	<p>1. Identification of students for the gifted education program shall be based on multiple criteria established by the school division and designed to seek out those students with superior aptitudes, including students for whom accurate identification may be affected because they are economically disadvantaged, have limited English proficiency, or have a disability. Data shall include scores from valid and reliable instruments that assess students' potential for advanced achievement, as well as instruments that assess demonstrated advanced skills, conceptual knowledge, and problem-solving aptitudes. The proposed new language requires that the identification of students be based on multiple criteria, including those students that are economically disadvantaged, have limited English proficiency, or have a disability.</p>

Current section number	Current requirement	Proposed change and rationale
8VAC20-40-40. Identification.	No current requirement.	<p>2. Valid and reliable data for each referred student shall be examined by the building-level or division-level identification and placement committee. The committee shall determine the eligibility of each referred student for the school division's gifted education services. Students who are found eligible by the identification and placement committee shall be offered service options with appropriately differentiated curriculum and instruction by the school division. The proposed new language requires that valid and reliable data will be used by the identification and placement committee when determining eligibility and service options for identified students.</p>
8VAC20-40-40. Identification.	No current requirement.	<p>3. The identification process used by each school division must ensure that no single criterion is used to determine a student's eligibility. The identification process shall include at least three measures from the following categories:</p> <ul style="list-style-type: none"> a. Assessment of appropriate student products, performance, or portfolio; b. Record of observation of in-classroom behavior; c. Appropriate rating scales, checklists, or questionnaires; d. Individual interview; e. Individually administered or group-administered, nationally norm-referenced aptitude and/or achievement tests; f. Record of previous accomplishments (such as awards, honors, grades, etc.); or g. Additional valid and reliable measures or procedures. <p>The proposed new language ensures that no single criterion is used to determine a student's eligibility and provides a list of criteria from which three measures shall be included in the identification process.</p>
8VAC20-40-40. Identification.	No current requirement.	<p>4. If a program is designed to address general intellectual aptitude, an individually administered or group-administered, nationally norm-referenced aptitude test shall be included as one of the three measures used in the school division's identification procedure. The proposed new language ensures that a nationally norm-referenced aptitude test shall be included as one of the three measures used for identification in general intellectual aptitude.</p>

Current section number	Current requirement	Proposed change and rationale
8VAC20-40-40. Identification.	No current requirement.	<p>5. If a program is designed to address specific academic aptitude, an individually administered or group-administered, nationally norm-referenced aptitude or achievement test shall be included as one of the three measures used in the school division's identification procedures.</p> <p>The proposed new language ensures that a nationally norm-referenced aptitude or achievement test shall be included as one of the three measures used for identification in a specific academic aptitude area.</p>
8VAC20-40-40. Identification.	No current requirement.	<p>6. If a program is designed to address either the visual or performing arts or career and technical aptitude, a portfolio or other performance assessment measure in the specific aptitude area shall be included as part of the data reviewed by the identification and placement committee.</p> <p>The proposed new language ensures that a portfolio or other performance measure will be used in the identification of visual or performing arts or career and technical aptitude.</p>
8VAC20-40-40. Identification.	No current requirement.	<p>E. Within 90 instructional days, beginning with the receipt of a parent's or legal guardian's consent for assessment, the identification and placement committee shall determine the eligibility status of each student referred for the division's gifted education program and notify the parent or guardian of its decision. If a student is identified as gifted and eligible for services, the identification and placement committee shall determine which service options most effectively meet the assessed learning needs of the student. Identified gifted students shall be offered placement in an instructional setting that provides:</p> <p>The proposed new language ensures that school divisions will have 90 instructional days, beginning with the receipt of a parent's or legal guardian's consent for assessment, to determine a student's eligibility and placement for services.</p>
8VAC20-40-40. Identification.	No current requirement.	<p>1. Appropriately differentiated curriculum and instruction provided by professional instructional personnel trained to work with gifted students; and</p> <p>The proposed new language ensures that school divisions will provide appropriately differentiated curriculum and instruction provided by professional instructional personnel trained to work with gifted students.</p>

Current section number	Current requirement	Proposed change and rationale
8VAC20-40-40. Identification.	No current requirement.	2. Monitored and assessed student outcomes that are reported to the parents and legal guardians. The proposed new language ensures that school divisions will provide parents and legal guardians with reports of student outcomes.
8VAC20-40-50. Criteria for screening and identification.	<p>Eligibility of students for programs for the gifted shall be based on multiple criteria for screening and identification established by the school division, and designed to seek out high aptitude in all populations. Multiple criteria shall include four or more of the following categories:</p> <ol style="list-style-type: none"> 1. Assessment of appropriate student products, performance, or portfolio; 2. Record of observation of in-classroom behavior; 3. Appropriate rating scales, checklists, or questionnaires; 4. Individual interview; 5. Individual or group aptitude tests; 6. Individual or group achievement tests; 7. Record of previous accomplishments (such as awards, honors, grades, etc.); 8. Additional valid and reliable measures or procedures. <p>If a program is designed to address general intellectual aptitude, aptitude measures must be included as one of the categories in the division identification plan. If a program is designed to address specific academic aptitude, an achievement or an aptitude measure in the specific academic area must be included as one of the categories in the division identification plan. If a program is designed to address either the visual/performing arts or technical/practical arts aptitude, a performance measure in the specific aptitude area must be used. Inclusion of a test score in a division identification plan does not indicate that an individual student must score at a prescribed level on the test or tests to be admitted to the program. No single criterion shall be used in determining students who qualify for, or are denied access to, programs for the gifted.</p>	Repealed. The language in this section has been incorporated into section, 8VAC20-40-40. Screening, referral, identification, and service.

Current section number	Current requirement	Proposed change and rationale
8VAC20-40-55. Parents rights for notification, consent, and appeal.	No current requirement.	<p>A. School divisions shall provide written notification to and seek written consent from parents and legal guardians to:</p> <ol style="list-style-type: none"> 1. Conduct any required assessment to determine a referred student's eligibility for the school division's gifted education program; 2. Announce the decision of the identification and placement committee regarding a referred student's eligibility for and placement in the school division's gifted education program; and 3. Provide services for an identified gifted student in the school division's gifted education program. <p>The proposed new language ensures that parents and legal guardians have rights of written notification, consent, and appeal.</p>
8VAC20-40-55. Parents rights for notification, consent, and appeal.	No current requirement.	<p>B. Each school division shall adopt a review procedure for students whose cases are appealed. This procedure shall involve a committee, the majority of whose members did not serve on the initial identification and placement committee, and shall inform parents or legal guardians, in writing, of the appeal process. Requests filed by parents or legal guardians to appeal any action of the identification and placement committee shall be filed within 10 instructional days of receipt of notification of the action by the division. The process shall include an opportunity to meet with an administrator to discuss the decision.</p> <ol style="list-style-type: none"> 1. A parent or legal guardian of a student who was referred but not identified by the identification and placement committee as eligible for services in the school division's gifted education program shall be informed, in writing, within 10 instructional days after receipt of the appeal, of the school division's process to appeal the committee's decision. 2. A parent or legal guardian of an identified gifted student may appeal any action taken by the school division to change the student's identification for, placement in, or exit from the school division's gifted education program. <p>The proposed new language ensures that parents and legal guardians have the right for an appeal within a specified time period.</p>
8VAC20-40-55. Parents rights for notification, consent, and appeal.	No current requirement.	<p>C. Following the notification and consent of a parent or legal guardian, the identification and placement committee shall apprise school administrators of each student's eligibility status. The proposed new language ensures that school division administrators are apprised of each student's eligibility status.</p>

Current section number	Current requirement	Proposed change and rationale
8VAC20-40-60. Local plan.	8VAC20-40-60. Local plan. A. Each school division shall submit to the Department of Education for approval a plan for the education of gifted students. Modifications to the plan shall be reported to the Department of Education on dates specified by the department. The plan shall include the components as follow:	8VAC20-40-60. Local plan, local advisory committee, and annual report. A. Each school board shall submit a comprehensive plan for the education of gifted students to the Department of Education (DOE) for technical review on a schedule determined by the Department. Each school board shall approve a comprehensive plan for the education of gifted students that includes the components identified in these regulations. The development process for the school division's local plan for the education of the gifted shall include opportunities for public review of the school division's plan. The approved plan shall be accessible through the division's Web site and the school division shall ensure that printed copies of the comprehensive plan are available to citizens who do not have online access. The plan shall include the following components: The proposed revision requires submission of the local plan to the DOE for technical review on a schedule determined by the DOE and provides flexibility to school boards to set their own schedule for review and approval of their gifted education plan. In addition, the revision gives the community access to the school division's plan for the education of gifted students.
8VAC20-40-60. Local plan.	1. A statement of philosophy;	1. A statement of philosophy for the gifted education program; The proposed revision clarifies language.
8VAC20-40-60. Local plan.	2. A statement of program goals and objectives;	2. A statement of the school division's gifted program goals and objectives for identification, delivery of services, curriculum and instruction, professional development, and parent and community involvement. The proposed revision ensures that all sections are addressed in the local plan.
8VAC20-40-60. Local plan.	3. Procedures for the early and on-going identification and placement of gifted students; beginning with kindergarten through secondary graduation in at least one of the four defined areas of giftedness;	3. Procedures for the early and ongoing screening, referral, identification and placement of gifted students, beginning with kindergarten through twelfth grade in at least a general intellectual aptitude or a specific academic aptitude program; and, if provided in the school division, procedures for the screening, referral, identification, and placement of gifted students in visual or performing arts or career and technical aptitude programs; The proposed revision clarifies the existing language to incorporate best practices and consistency throughout the regulations.

Current section number	Current requirement	Proposed change and rationale
8VAC20-40-60. Local plan.	4. A procedure for notifying parents or legal guardians when additional testing or additional information is required during the identification process and for obtaining permission prior to placement of students in the appropriate program;	4. A procedure for written notification of parents or legal guardians when additional testing or additional information is required during the identification process and for obtaining permission of parents or legal guardians prior to placement of a gifted student in the appropriate service options; The proposed revision clarifies the existing language to incorporate current research, best practices, and maintain consistency throughout the regulations.
8VAC20-40-60. Local plan.	5. A policy for notifying gifted students' change of placement within, and exit from the program, which includes an opportunity for parents who disagree with the committee or committees decision to meet and discuss their concern or concerns with an appropriate administrator;	5. A policy for written notification to parents or legal guardians of identification and placement decisions, including initial changes in placement or exit from the program. Such notice shall include an opportunity for parents or guardians to meet and discuss their concerns with an appropriate administrator and to file an appeal; The proposed revision clarifies the existing language to incorporate best practices and maintain consistency throughout the regulations.
8VAC20-40-60. Local plan.	6. Assurances that records are maintained according to 8VAC20-150-10 et seq., Management of Student's Scholastic Record in the Public Schools of Virginia;	6. Assurances that student records are maintained in compliance with applicable state and federal privacy laws and regulations; The proposed revision ensures that student records will be maintained in compliance with applicable state and federal privacy laws and regulations should the laws change or new laws become applicable.
8VAC20-40-60. Local plan.	7. Assurances that (i) testing and evaluation materials selected and administered are sensitive to cultural, racial, and linguistic differences, (ii) identification procedures are constructed so that they identify high potential/ability in all underserved culturally diverse, low socio-economic, and disabled populations, (iii) standardized tests have been validated for the specific purpose for which they are used, (iv) instruments are administered and interpreted by a trained personnel in conformity with the instructions of their producer;	7. Assurances that (i) the selected and administered testing and assessment materials have been evaluated by the developers for cultural, racial, and linguistic biases; (ii) identification procedures are constructed so that those procedures may identify high potential or aptitude in any student whose accurate identification may be affected by economic disadvantages, by limited English proficiency, or by disability; (iii) standardized tests and other measures have been validated for the purpose of identifying gifted students; and (iv) instruments are administered and interpreted by trained personnel in conformity with the developer's instructions; The proposed revision provides language consistency with other DOE documents and provides consistency throughout the regulations.

Current section number	Current requirement	Proposed change and rationale
8VAC20-40-60. Local plan.	8. A procedure to identify and evaluate student outcomes based on the initial and ongoing assessment of their cognitive and affective needs;	8. Assurances that accommodations or modifications determined by the school division's special education Individual Education Plan (IEP) team, as required for the student to receive a free appropriate public education, shall be incorporated into the student's gifted education services; The proposed revision clarifies the existing language to incorporate current research in support of underrepresented populations and compliance with the Americans with Disabilities Act (ADA).
8VAC20-40-60. Local plan.	9. A procedure to match service options, including instructional approaches, settings, and staffing, to designated student needs;	9. Assurances that a written copy of the school division's approved local plan for the education of the gifted is available to parents or legal guardians of each referred student, and to others upon request; The proposed revision provides for the distribution of information to constituent groups.
8VAC20-40-60. Local plan.	10. A framework for appropriately differentiated curricula indicating accelerative and enrichment opportunities in content, process, and product;	10. Evidence that gifted education service options from kindergarten through twelfth grade are offered continuously and sequentially, with instructional time during the school day and week to (i) work with their age-level peers, (ii) work with their intellectual and academic peers, (iii) work independently; and (iv) foster intellectual and academic growth of gifted students. Parents and legal guardians shall receive assessment of each gifted student's academic growth; The proposed revision clarifies the existing language to incorporate current research.
8VAC20-40-60. Local plan.	11. Procedures for the selection/evaluation of teachers and for the training of personnel to include administrators/supervisors, teachers, and support staff;	11. A description of the school division's program of differentiated curriculum and instruction demonstrating accelerated and advanced content; The proposed revision clarifies the existing language to incorporate current research.
8VAC20-40-60. Local plan.	12. Procedures for the appropriate evaluation of the effectiveness of the school division's program for gifted students; and	12. Policies and procedures that allow access to programs of study and advanced courses at a pace and sequence commensurate with their learning needs; The proposed revision clarifies the existing language to incorporate current research.
8VAC20-40-60. Local plan.	13. Other information as required by the Department of Education.	13. Evidence that school divisions provide professional development based on the competencies specified in 8VAC20-542-310, Gifted education (add-on endorsement), for instructional personnel who deliver services within the gifted education program; and The proposed revision assures that school divisions provide professional development based on competencies specified in 8VAC20-542-310.

Current section number	Current requirement	Proposed change and rationale
8VAC20-40-60. Local plan.	No current requirement.	14. Procedures for the annual review of the effectiveness of the school division's gifted education program, including review of student outcomes and the academic growth of gifted students. Such review shall be based on multiple criteria and shall include multiple sources of information. The proposed new language assures that school divisions review annually the effectiveness of the school division's gifted education program based on multiple criteria and sources of information.
8VAC20-40-60. Local plan.	B. Each school division shall establish a local advisory committee composed of parents, school personnel, and other community members. This committee shall reflect the ethnic and geographical composition of the school division. The purpose of this committee shall be to advise the school board through the division superintendent of the educational needs of all gifted students in the division. As a part of this goal, the committee shall review annually the local plan for the education of gifted students, including revisions, and determine the extent to which the plan for the previous year was implemented. The recommendations of the advisory committee shall be submitted in writing through the division superintendent to the school board.	B. Each school division shall establish a local advisory committee composed of parents, school personnel, and other community members who are appointed by the school board. This committee shall reflect the ethnic and geographical composition of the school division. This committee shall have two responsibilities: (i) to review annually the local plan for the education of gifted students, including revisions, and (ii) to determine the extent to which the plan for the previous year was implemented. The findings of the annual program effectiveness and the recommendations of the advisory committee shall be submitted annually in writing to the division superintendent and the school board. The proposed language revises the regulations to comply with § 22.1-18.1. <i>Code of Virginia</i> .
8VAC20-40-60. Local plan.	No current requirement.	C. Each school division shall submit an annual report to the Department of Education in a format prescribed by the department. The proposed new language revises the regulations to comply with § 22.1-18.1. <i>Code of Virginia</i> .
8VAC20-40-70. Funding.	State funds administered by the Department of Education for the education of gifted students shall be used to support only those activities identified in the school division's plan as approved by the Board of Education.	Funds designated by the Virginia General Assembly for the education of gifted students shall be used by school divisions in accordance with the provisions of the Appropriation Act. The proposed language revision addresses funding for the education of gifted students as governed by the Appropriation Act.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The current *Regulations Governing Educational Services for Gifted Students* do not impact small businesses; consequently, these revisions do not change the effect on small business.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The primary advantages of the proposed regulations for families may include:

1. Greater access to gifted services that are designed to meet the educational needs of students through increased availability of the local plan;
2. Better alignment of services for students based on their individual strengths and the application of current relevant research and practice;
3. Increased parental and student involvement through the establishment and monitoring of student outcomes;
4. Increased communication between the school division and parents of identified students through the periodic reports of student progress;
5. Increased access to academic challenges; accelerated coursework; and entry into college-level opportunities for growth;
6. Increased earning power associated with the acquisition of educational advancement; and
7. Increased direct responsibility for the local school board in the development, review, and approval of the comprehensive local plan for the education of the gifted.